fix rules for its transfer, descent, and devolution.[8] In the case of personalty each state allows the property within its jurisdiction to pass by the law of the state of the decedent's domicile:[4] two states, therefore, each grant a privilege, and each, it seems, if it chose, could exact a tax. But in the case of realty, title passes by the *lex rei sitæ*, and that state alone controls the privilege of succession.[5] Where, however, the testator has directed the sale of his foreign real estate, it has been argued that an equitable conversion is worked, and that therefore the state of his domicile may impose a tax on the proceeds as personalty. A recent case before the Supreme Court of Pennsylvania upholds this position, consistently with previous decisions in that jurisdiction. *In re Vanuxem's Estate*, 61 Atl. Rep. 876.

It would seem that the question as to whether a conversion has taken place must be determined by the law of the state where the land is situated, since that state alone has dominion over the property. But if it is determined that there is a conversion, succession will occur by the law of the decedent's domicile, as in the case of other personalty.[6] The latter state may then exact a bounty for the privilege granted by it. An analogous question arises in the case of the interest of a deceased partner in foreign real estate belonging to the partnership, under the English rule that, in the absence of any agreement, partnership realty is *ipso facto* in the view of equity converted into personalty.[7] In such event, the tax has been held valid,[8] and may be supported on the above reasoning. But if the conversion is not effected by the will itself, but is to be effected only at some future time, it seems that succession will take place by the *lex rei sitæ*, and therefore the state of testator's domicile having granted no privilege can exact no tax. Where, for example, a testator devised foreign real estate to his wife for life, and upon her death directed its sale and the investment of the proceeds, the tax is not imposable by the state of the testator's domicile.[9] The fact that the proceeds of the sale are subsequently brought within the taxing state gives it no additional power, for the succession takes place at the moment of death, and the character of the property at that time is controlling.[10]

CHARITABLE BEQUESTS TO UNINCORPORATED SOCIETIES. — When property is left to an existing, but unincorporated society, whose purposes are not charitable or religious, the beneficiary is commonly held incapable of taking, irrespective of the rule against perpetuities, by reason of its own inherent incapacity to hold legal title; and the bequest or devise fails.[1] But when property is left to a charitable or (where statutes of mortmain do not prevent it) to a religious society, expressly in trust for some religious or charitable purpose, the law is unsettled. By far the greater part of the cases hold such bequests or devises good, relying generally upon the statute of 43 Elizabeth or some of its modern counterparts[2] which are designed

[8] McCormick *v.* Sullivant, 10 Wheat. (U. S.) 192.
[4] See Matter of Estate of Swift, 137 N. Y. 77, 86.
[5] Matter of Estate of Swift, *supra.*
[6] See *Re* Stokes, 62 L. T. 176. But see Estate of Swift, *supra, contra.*
[7] St. 53 & 54 Vict. c. 39, §§ 20, 22.
[8] Forbes *v.* Steven, L. R. 10 Eq. 178; *Re* Stokes, *supra.* But see Custance *v.* Bradshaw, 4 Hare 315.
[9] Hale's Estate, 161 Pa. St. 181. [10] Drayton's Appeal, 61 Pa. St. 172.

[1] Carrier *v.* Price, (1891) 3 Ch. 159.
[2] St. 43 Eliz. c. 4. Laws of N. Y., c. 46, § 93.

to prevent charitable testamentary trusts from failing, either through indefiniteness of the beneficiaries[8] or of the trustees.[4] Some courts hold the trusts valid without any statute, relying, perhaps, on the non-statutory power over charities which was derived by the courts of equity from the king as *parens patriæ*;[5] though no less an authority than Marshall was of the opinion that such trusts are invalid in the absence of statute, and denied the adequacy of the royal prerogative to mend so grave a defect as the non-incorporation of the designated trustee.[6]

Where property is left, as before, to unincorporated charitable or religious societies, but by a devise or bequest absolute in form, and not expressly providing that it be held in trust, we find the courts using different reasoning, and dividing along different lines. Some say flatly that such gifts are void for lack of any one capable of taking title.[7] Others declare that the society may take,[8] and jump the difficulty that, in legal contemplation, the society does not exist, apart from its individual members. Even these courts, however, as a matter of practice, can only decree that the property be turned over to the treasurer, and rely on him for the rest.[9] Some courts draw a distinction between the power to take money for general purposes and the power to take land, on the ground that there is no practical objection to the former, whereas perpetual succession is requisite for the latter.[10] Still other courts, though admitting that the unincorporated society cannot hold title, give it to the heirs of the testator in trust for the society.[11] Most of the courts in this class of cases lay no stress on the charitable nature of the organizations, and argue as though they were concerned with unincorporated clubs or labor unions. It would seem in reason that an absolute devise should be dealt with exactly as if an express trust had been declared, for any bequest to a religious or charitable association is really a bequest in trust for the indefinite class which the association purports to benefit. Certainly the testator can rarely intend the members of the society to be either legal tenants in common for their own private purposes, or co-beneficiaries. Some cases have proceeded on this principle, and although the devise was absolute in form have recognized the applicability of the statutes concerning charitable trusts.[12] The latest case in point, however, has adhered to the distinction. *Fralick* v. *Lyford*, 107 N. Y. App. Div. 543.

CONSTITUTIONALITY OF DELEGATION OF LEGISLATIVE POWER. — The maxim of Constitutional Law that legislative power may not be delegated is as broad as its boundaries are vague. In applying it courts are reluctant to declare a statute unconstitutional unless clearly repugnant to the Constitution.[1] The cases involving the question in which statutes are upheld

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[8] Board, etc., of Rush Co. *v.* Dinwiddie, 139 Ind. 128.
[4] M'Cord *v.* Ochiltree, 8 Blackf. (Ind.) 15.
[5] Charles *v.* Hunnicutt, 5 Call (Va.) 311. *Cf.* M'Cord *v.* Ochiltree, *supra*.
[6] Baptist Ass'n *v.* Hart's Ex'rs, 4 Wheat. (U. S.) 1.
[7] Owens *v.* Missionary, etc., Society, 14 N. Y. 380. *Cf.* State, etc., Church *v.* Warren, 28 Ind. 338.
[8] Ex'rs of Burr *v.* Smith, 7 Vt. 241.
[9] Parker *v.* Cowell, 16 N. H. 149.
[10] Estate of Ticknor, 13 Mich. 44. *Cf.* Hadden *v.* Dandy, 51 N. J. Eq. 154.
[11] American, etc., Society *v.* Wetmore, 17 Conn. 181.
[12] West *v.* Knight, part 1, Ch. Cas. 134.

[1] *Re* Janvrin, 174 Mass. 514.